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International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

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Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
Twenty-second session

Summary record of the 275th meeting
Held at the Palais des Nations, Geneva, on Tuesday, 14 April 2015, at 3 p.m.

Chairperson: Mr. Carrión Mena

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 73 of the Convention (*continued*)

Initial report of Peru (CMW/C/PER/1; CMW/C/PER/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Peru took places at the Committee table.*

2. **Mr. Chávez Basagoitia** (Peru), introducing his country's initial report (CMW/C/PER/1), said that the creation of the Vice Ministry of Human Rights and Access to Justice, which assisted the executive branch in implementing a human-rights-based approach to public policy, represented a milestone in the promotion of human rights in Peru. Among the objectives of the National Human Rights Plan for the period 2014–2016 were the social integration of migrants in the country, the strengthening of mechanisms encouraging Peruvians residing abroad to return and the adoption of new legislation on aliens, which was being drafted. The Plan also aimed to ensure the comprehensive promotion and protection of the rights of migrants and their families, combat trafficking in persons and other forms of forced migration, safeguard the rights of foreigners and strengthen protection for internally displaced persons.

3. The National Commission against Discrimination, an inter-agency body that coordinated anti-discrimination efforts, carried out monitoring and auditing activities and provided technical guidance for the executive branch regarding equality and non-discrimination. A single platform to prevent discrimination was being established, drawing on recommendations and models from other countries in the region, and another platform assisted victims in reporting cases of racial discrimination.

4. The functioning of the National Migration Authority had been improved through, for example, the establishment of an online services platform allowing migrants to perform certain administrative procedures, such as requesting identity cards, more efficiently. The Authority was working to bring its procedures into line with the provisions of the Constitution and of human rights treaties to which Peru was a party. The Intersectoral Round Table for Migration Management had recently adopted guidelines to modernize the country's approach to migration policy. The Round Table addressed issues relating to Peruvians residing abroad and their families, those wishing to emigrate, returned Peruvians and those who wished to return, and foreigners in Peru, identifying priorities and setting goals using a results-based approach.

5. The Aliens Act, which was implemented jointly by the National Migration Authority and the Round Table for Migration Management, did not regulate specific aspects of migration and thus required amendment. While an amended version of the Act was still being drafted, along with updates to the Nationality Act, the rights of migrants in Peru were already protected in several ways – for example, through the national health authority, which protected the fundamental right to health regardless of migration status. Likewise, the Ministry of Labour and Employment made significant efforts to defend the rights of migrant workers and their families, in particular through the Directorate of Labour Migration. In cooperation with the International Organization for Migration and the International Labour Organization, it had organized workshops to raise awareness among public officials of issues related to labour migration, including the rights of migrants and their families as enshrined in the Convention. Videoconferences had been held to train advisers working in the Migrant Guidance Service in matters relating to labour migration. The "Let's Go, Peru" (Vamos Perú) programme had been implemented through the returnees' employment platform and the Act on the Economic and Social Reintegration of

Returned Migrants, promoting the employment of unemployed persons and those at risk of unemployment.

6. The National Labour Inspection Authority was responsible for ensuring respect for labour regulations and reporting cases of trafficking in persons and labour exploitation, to which migrant workers were especially vulnerable. The Constitution recognized the universal right to access to justice, and migrant workers and their families had recourse to several legal bodies. The Ministry of Justice and Human Rights provided free legal assistance to victims of trafficking and rights violations through the Directorate-General of the Public Defence Service. Trafficking in persons was also addressed by the National Plan of Action against Trafficking in Persons, which aimed to prevent trafficking, prosecute perpetrators, and protect and assist victims. The Directorate for the Investigation of Trafficking in Persons and Smuggling of Migrants worked to prevent, investigate, report and combat such crimes. Two prosecution services specializing in the trafficking of persons had been established to address the growing problem of organized crime rings subjecting individuals to labour and sexual exploitation.

7. Despite the progress made in Peru in protecting the rights of migrants, challenges remained, and tackling them would require efforts by society as a whole.

8. **Ms. Castellanos Delgado**, acknowledging the progress made in Peru in promoting the human rights of migrants, said that it was nevertheless regrettable that no law on migration had yet been adopted. She requested information on the draft laws that the Government claimed to have drawn up, including their number and status, who had drafted them and whether civil society had been consulted. While commending the State party's efforts to combat trafficking in persons, she observed that work also remained to be done in that area, and she asked for further information on how the issue was being tackled. She enquired whether deportation orders were suspended during the appeals process or whether those wishing to appeal such orders must do so through the State party's consulates following deportation; in the latter case a number of rights might be violated. Noting that the Aliens Act prevented persons with disabilities from entering or residing in Peru, she emphasized that such discrimination was prohibited by a number of international instruments and by the Peruvian Constitution itself.

9. **Mr. Ceriani Cernadas** said that the range of legal instruments on migration created confusion about the law and could lead to inconsistent application of the relevant legal provisions. He asked what measures the Government was taking to address the reportedly large increase in expulsions of migrant workers. He wished to know what measures would be introduced to address the obstacles to family reunification presented by minimum residence length and income requirements.

10. Information before the Committee indicated that migrant workers could be detained as a sanction and as part of the procedures leading up to expulsion. He asked whether such workers could indeed be detained, in any form, under current procedures and said that the reference to detention in the Aliens Act was cause for concern. Noting that the Committee had been informed that the vast majority of expelled migrant workers were of Haitian origin, he asked whether alternative measures, such as humanitarian assistance, had been considered in response to increased migration flows following the 2010 earthquake in Haiti.

11. He requested more information on whether the police investigated violations of migration law regardless of the fact that such violations were not considered a criminal offence. He also requested information on the mechanism that allowed citizens to report foreign nationals in an irregular situation to the authorities, which could lead to sanctions for the foreigners concerned. He asked whether the State party was taking legislative measures to remove the cap on the employment of migrant workers by individual

companies, given that such restrictions were not in keeping with the provisions of the Convention.

12. **Mr. Brillantes** asked whether migrant workers in Peru were able to join and form trade unions without restriction and whether they could hold office in unions. Referring to the concerns about migrant domestic workers raised by the Special Rapporteur on contemporary forms of slavery in her report on her 2011 visit to Peru (A/HRC/18/30/Add.2), he asked whether the State party had implemented the Special Rapporteur's recommendations to address failures to register domestic workers and restrictions on their freedom of movement and communication. Had the State party considered ratifying the International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189)?

13. **Mr. Tall**, referring to paragraph 131 of the State party's report, asked whether the delegation could provide examples of prosecutions, and the ensuing sanctions, for acts of discrimination against migrant workers, and of cases in which employers or others had been found guilty of acts of violence against female domestic workers. He asked what follow-up action, including prosecutions and sanctions, had been taken against the businesses found to have committed offences relating to foreign workers during the period 2007–2012, and what compensation had been provided to the workers concerned. He requested more information on the crime of femicide (gender-related murder of women), including the applicable sanctions and the number of prosecutions for that crime.

14. He said that he would appreciate having details of the implementation of article 27 of the Convention on equal treatment for migrant workers and nationals with respect to social security. He asked for more information on the protection of the family unit as it pertained to Peruvians residing abroad and migrant workers living in Peru.

15. **Mr. Haque** asked how Peru, as an origin and destination country, maintained a balanced migration policy that safeguarded the rights of Peruvian migrants abroad and the rights of foreign nationals in Peru. He asked how the Government was tackling the migration problems specific to possessing a lengthy coastline.

16. Noting that large numbers of Peruvian migrant workers travelled to the United States of America, Spain and Italy, none of which was a party to the Convention, he asked how Peru engaged with those countries at the consular level to address issues concerning migrant workers. He requested more detailed information on the role of the private sector in sending Peruvian migrant workers abroad and in the treatment of migrant workers in Peru, as well as information on how government migration policy could benefit the private sector.

17. **Ms. Ladjel** said that the Committee would appreciate updated information on the situation of migrant workers in Peru, including details of surveys or research that could provide insight into whether there had been any change in their situation, particularly with regard to their countries of origin and to the downturn in the construction and real estate sectors, which were a key source of employment for migrant workers. She asked how the relatively large Peruvian diaspora contributed economically and politically to the State party, including through participation in local elections.

18. **Mr. Pime** requested more information on the National Commission against Discrimination, including how a case could be referred to the Commission, the means at its disposal for investigations, the impact of its decisions and whether migrant workers were aware of its existence. He asked how the State party disseminated the Convention among public officials, particularly those working in areas linked to migration, and to migrants living in or transiting through Peru. He enquired how migrant workers in Peru were informed of their constitutional right of access to justice.

19. **Mr. Kariyawasam** said that information before the Committee indicated that large numbers of Peruvian migrant workers residing abroad were in an irregular situation. He asked what measures, including bilateral ones, the State party was taking to minimize irregular migration within and from Peru. He enquired whether there were statistics concerning the number of domestic workers of foreign origin in Peru and whether specific measures were in place to protect migrant domestic workers.

20. **Mr. Taghizadeh** requested detailed statistics on migration flows, including information on destination and origin countries, the sex of migrants and transitory migration, and on the scale and locations of seasonal work performed by Peruvian migrant workers in neighbouring countries. He asked how Peruvian consulates in destination countries supported Peruvian migrant workers in those countries and how they helped those workers exercise their right to vote in Peruvian elections.

21. **The Chairperson**, speaking as a Committee member and acknowledging the difficulty of collecting accurate migration statistics, particularly with regard to migrants in an irregular situation, asked how the State party ensured that it had a valid statistical basis for its migration policy. He asked how civil society was involved in migration-related policymaking and how it had participated in the preparation of the State party's report.

22. He enquired how the State party encouraged the channelling of private remittances into productive sectors of the economy in place of consumer spending. He said that information on the State party's experience of implementing the right to vote of Peruvians residing abroad could be useful to other States that were introducing similar policies. The delegation should assess the value of the bilateral and multilateral treaties concluded by Peru with other countries and comment on the Government's position on the proposal by the Union of South American Nations to establish South American citizenship and freedom of movement within South America.

The meeting was suspended at 4.40 p.m. and resumed at 5.10 p.m.

23. **Mr. Chávez Basagoitia** (Peru) said that his country was fine-tuning its legislative framework to make it consistent with the provisions of the Convention and the other international instruments to which Peru was a party. He was aware of the importance of obtaining reliable statistics for the Committee, but his delegation needed more time to do so, particularly regarding the number of Peruvian nationals living abroad. With regard to ILO Convention No. 189, there were more Peruvian domestic workers in neighbouring countries than foreign domestic workers in Peru. Nonetheless, Peru was considering ratifying the Convention.

24. **Mr. Sivina Hurtado** (Peru) said that both foreign nationals and Peruvians could use various legal channels, provided for by numerous national laws and the Constitution, to submit complaints. Under the new Act on Labour Court Proceedings (Act No. 29497), migrant workers enjoyed the same legal safeguards and access to justice as Peruvian nationals. Complaints were first brought before a labour court and, in the final instance, the Supreme Court. Such cases could also be brought before judicial bodies other than labour courts, as when the complainant's fundamental right to personal liberty had been violated or the person had fallen victim to a crime. Employees of the investigative services of the judiciary could attend information and training sessions on human trafficking and forced labour, which were organized with the help of ILO and the Brazilian Ministry of Labour. However, the judiciary had informed the Ministry of Justice and Human Rights that it lacked information on offences committed by migration officials, and there was a need to rectify the situation.

25. There were no avenues of appeal available exclusively to migrant workers in an irregular situation; they used the same legal channels as Peruvian nationals, thereby ensuring equality for all. However, as migrant workers might be unfamiliar with the legal

remedies available to them, the website of the judiciary provided information on judicial proceedings and on courts to which they could submit complaints. Other government bodies also sought to disseminate such information, and joint efforts had been made with the Ministry of Labour and Employment to ensure that the information was included in its "Guide for Peruvian Immigrants Abroad". Complaints by migrant workers were handled not by the judiciary but by the Public Prosecution Service and the police. Migrant workers could also assert their labour rights in various courts under Act No. 29497, which also provided for appeals in cassation. There was a dearth of statistics regarding complaints submitted by migrants and brought before judicial bodies, and on reparations received by migrant workers, mainly because Peru had no registers specifying the migrant status of a person. However, measures were being taken to establish such a register within the judicial system. An administrative resolution provided language support for foreign nationals during legal proceedings, but he was unable to provide information on the degree to which such services were being used. Statistical trends in the expulsion of foreign nationals could not be calculated as the information recorded about convicts did not specify whether they were Peruvian nationals.

26. Peru had ratified numerous international instruments to prevent, investigate and punish violence against women. The National Plan to Combat Violence against Women for the period 2009–2015 had been agreed on by seven ministries and designed in cooperation with all relevant stakeholders, including subject experts and civil society representatives. It covered the three main areas of State activity: guaranteeing policymaking to combat violence against women, guaranteeing access to high-quality services for women, and promoting change in attitudes and in social interaction between men and women.

27. **Mr. Vallejo Martell** (Peru), addressing the issue of international protection and assistance for migrant workers, said that the Directorate-General for Peruvian Communities Abroad and Consular Affairs, an agency of the Ministry of Foreign Affairs, which oversaw policymaking, protection and assistance with regard to Peruvians abroad, was working to establish an integrated consular assistance and protection system designed to provide high-quality service to Peruvians abroad and ensure that all consulates followed uniform procedures. Pilot operations had begun in Argentina, Chile and the United States, and there were plans to start similar operations in Italy and Spain. Funding in the annual State budget had been earmarked for such assistance. In 2014, only 60 per cent of the allocated funds had been used, despite an increase in awareness-raising campaigns.

28. With regard to agreements with other countries, he said that Peru and Ecuador had signed the Permanent Migration Statute to facilitate the regularization of the status of migrants between the two countries. To eliminate shortcomings in the Statute, the two countries' Heads of State had agreed on supplemental measures in accordance with the Agreement on Residence for Nationals of the States Parties of the Common Market of the South (MERCOSUR). A meeting would be held with Ecuador later in 2015 to further improve the Statute. Multilateral agreements had been concluded in relevant areas such as education and social security. For example, Peru and Uruguay had both ratified the Ibero-American Multilateral Social Security Agreement, which had enabled the two countries to agree on the use of a mutually recognized social security card. Bilateral social security agreements had been signed with Argentina, Canada, Chile, Ecuador and Spain, and there were plans to sign such an agreement with the Republic of Korea. Other bilateral agreements relevant for the situation of migrant workers had been concluded with Chile and Colombia.

29. Peruvian consulates made provision for Peruvians abroad to vote in elections. Peruvians living abroad who were entered in the national identity register could vote in both presidential and congressional elections but could not stand for office. A bill was before the Congress regarding the creation of a single constituency for Peruvians abroad to

replace the current procedure whereby their votes were counted under the election results of the constituency of Greater Lima. With regard to remittances, the estimated 2 million Peruvians living abroad sent home remittances totalling some US$ 3 billion a year, according to a study conducted by the Central Reserve Bank of Peru. While remittances were mainly spent on consumer purchases, the Ministry of Foreign Affairs promoted a more productive use of such remittances by offering Peruvians living abroad an insurance policy costing US$ 8 which would enable the children of such Peruvians to obtain a secondary education if their parents died.

30. After the Heads of State of the Union of South American Nations (UNASUR) had voiced their support for the creation of South American citizenship, Peru, which at that time had been presiding over UNASUR, had organized two videoconferences to take the issue forward. During the first, member States had produced a concept note and road map. During the second, Peru had presented guiding elements for the gradual establishment of South American citizenship founded on the idea of a common identity and entitling citizens to, for example, the right to work in member countries; access to social security, consular protection and assistance; and the recognition of their civil and political rights in member countries. The guiding elements had been approved by the other member States, and a concept note had later been agreed upon by the Heads of State. A working group on South American citizenship had also been formed.

The meeting rose at 6 p.m.